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FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			DIVECHA, KAMAL B	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

09/690,007

Applicant(s)

MORRIS ET AL.

Examiner

KAMAL B. DIVECHA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-28, 55-57 and 64-74 is/are pending in the application.
- 4a) Of the above claim(s) 29-54 and 58-63 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28, 55-57 and 64-74 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 5/15/01 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

Claims 1-28, 55-57 and 64-74 are pending in this application.

Claims 29-54 and 58-63 remains cancelled.

### **Election/Restrictions**

The election/restriction requirement presented in the previous office action is withdrawn due to the fact that after complying with the 35 U.S.C. 112, first and second paragraph rejection presented below, the claimed subject matter may end up being similar.

Claims 1-28, 55-57 and 64-74 are presented for examination.

### **Drawings**

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the features such as varying and adjusting, as in claims 1-28, 55-57 and 64-74 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the

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drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

**Claim Rejections - 35 USC § 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claim 1-28, 55-57 and 64-74 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

**Independent claim 1 recites:**

A method of presenting advertising to viewers in a computer network environment, the method comprising: monitoring a viewer's interaction with an associated computer system;  
determining an amount of time to be used in later displaying advertisements on the viewers associated computer system based on the viewer's monitored interactions; and  
based on the determined amount of time, varying an amount of display time for which later displayed advertisement is to be displayed on the viewer's associated computer system.

The specification fails to describe the process of determining an amount of time to be used in later displaying advertisements on the viewers associated computer system based on the

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viewer's monitored interactions; and, based on the determined amount of time, varying an amount of display time for which later displayed advertisement is to be displayed on the viewer's associated computer system, in its clear, concise and exact terms.

The specification, at page 15 lines 1-14, describes the process wherein the timing and rate at which ads displayed in advertising hot spots can be varied according to one or more tuning parameters. Tuning parameters include ad expiration, maximum display count, minimum display time, idle delay, active delay, etc. The tuning parameters can be determined and specified by the ad system operator. Typically, tuning parameters are used to cause the display of an ad to be replaced by the display of another ad based on a user's activity with respect to the user's computer.

Ad expiration refers to the quantity of time for which an ad is available for display (specification, pg. 15 lines 21-22).

Maximum display count refers to the maximum number of impressions of a given ad that may be displayed to any one user in one batch of ads (specification, pg. 16 lines 16-17).

Minimum display time refers to the **minimum amount of time that an ad must be displayed** before another ad is displayed (specification, pg. 18 line 1-2).

Furthermore, the specification goes on and teaches: "the values for minimum display time are expressed in second, and typically vary between fifteen seconds and five minutes. When an ad is displayed, the ad will stay displayed for its minimum display time. When that time is elapsed, the ad will be rotated out and replaced by another ad, subject to the idle parameter..." (specification, pg. 18 lines 2-20).

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The timing of the change of ads displayed in screen real estate areas can be controlled by the tuning parameters. The tuning parameters can be implemented, for example, to cause an ad to be displayed for a specified period after the user has gone idle before the ad is replaced with another ad (specification, pg. 19 lines 9-16).

Overall, the description suggests the process of changing, transiting, and/or replacing ads with another ads based on the tuning parameters determined by the operator (specification, pg. 22 lines 6-23, pg. 23 lines 1-20).

In fact, the specification teaches away from the claimed invention because at page 29, lines 8-23 of applicant's specification, the applicant's discloses the process of allowing the host to adjust the counts of how many ads need to be displayed, and to adjust the tuning parameters accordingly for future batches. Stated another way, the adjusting and/or varying is clearly not based on the determined amount of time, which is further based on the monitored interactions.

There is simply no description and/or support of the subject matter set forth above in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention, because the tuning parameters can be predetermined, by the system operator.

Claims 2-28, 55-57 and 64-74 are rejected for the same reasons as set forth above.

Applicant is advised take an appropriate action.

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-28, 55-57 and 64-74 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

First, in the context of claim 1, it is unclear whether the functionality of “monitoring, determining, and varying” is with respect to the client (user), host or some other associated device.

Secondly, in the context of the claim 1, it is unclear what types of interactions are being monitored. For example, on page 8 of specification, the viewer’s interaction includes monitoring a maximization, minimization of a window, monitoring viewers use of the input and output devices, etc.

Third, the term “later” in the claims is a relative term, which renders the claim indefinite. The term “later” is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, for example, when the advertisement will be displayed, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Fourth, in the context of the claim, the functionality of determining an amount of time to be used in later displaying advertisements on the viewers associated computer system based on the viewer’s monitored interactions; and, based on the determined amount of time, varying an amount of display time for which later displayed advertisement is to be displayed on the viewer’s associated computer system, is unclear. Initially, the claim suggests the process of determining the amount of time to be used in later displaying ad, i.e. not displayed yet, and then, the claim

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suggests varying an amount of time for which a later displayed ad, i.e. displayed ad, is to be displayed, to be displayed. It is unclear whether the claim is referring to a single ad or more than one ad.

At last, Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are “client reporting back to host on how many impressions and/or click-through have been generated that allows the host to adjust the tuning parameters” (specification, pg. 29 lines 8-22). Without this step, it is unclear how the functionality of adjusting is achieved.

Furthermore, claim 3 and 4 recites the term “may be”. The claim renders the claim indefinite because it is unclear whether the limitation followed by the term is actually implemented and/or part of the claimed invention. In other words, the limitation followed by the term is not guaranteed.

In addition to reasons set forth above, in the context of claim 55, it is unclear whether the functionality of storing and sending the information is based on user's computer, application, and/or host computer or application.

Furthermore, claim 55 seems to be missing an essential step(s) because the preamble discloses a method of optimizing a click-through rate of a user viewing content, however, the body of the claim fails to achieve such a process. Simply storing click-through information and sending it to the host computer does not optimize the click-through rate. In order to optimize the click-through rate, the host must first analyze the received information, and based on the analysis, the host must take the appropriate action(s), such as adjusting tuning parameters. As



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such, claim 55 is considered indefinite because the process, which when executed would fail to optimize a click-through rate of a user.

Claim 64 recites the limitation “the associated computer program” in the claim. There is insufficient antecedent basis for this limitation in the claim.

Claims 64, 67 and claim 68 recites the term “continually”. The term renders the claim indefinite because when the computer system is shut down, restarted and/or powered down, the functionality will be inoperable.

Claims 2-28, 55-57 and 64-74 are rejected for one or more reasons as set forth above.

Applicant is advised take an appropriate action.

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**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-28, 55-57 and 64-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blumenau (U.S. Patent Number 6,108,637) in view of Guyot et al. (hereinafter Guyot, U.S. Patent Number 6,119,098), and further in view of Adler et al. (hereinafter Adler, U. S. Patent No. 6,009,409).

As per claim 1,55, Blumenau disclosed a method of presenting advertising to viewers in a computer network environment, the method comprising: monitoring a viewer's interactions with an associated computer system; and determining an amount of time to be used in later displaying advertisements on the viewer's associated computer system based on the viewer's monitored

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interactions (Title, Abstract, column 7 lines 58-65, column 13 lines 51-58, column 14 lines 7-19).

Blumenau taught the invention substantially as claimed, however, Blumenau did not expressly teach a method based on the determined amount of time, varying an amount of display time for which a later displayed advertisement is to be displayed on the viewer's associated computer system and storing click-through information for the advertisements; and sending the click-through information to a host computer.

Blumenau suggested exploration of art and/or provided a reason to modify the method of presenting advertisement to include additional features such as varying an amount of display time for which a later displayed advertisement is to be displayed on the viewer's associated computer system based upon review and analysis of monitoring information (column 18 lines 38-56, column 19 lines 2-11, column 20 lines 23-36).

Guyot discloses a method for targeting and distributing advertisement having steps of downloading advertisements and set of tuning parameters to a user's computer, wherein the set of parameters are configured to cause a display of a first advertisement on the user's computer (abstract), monitoring the viewer's interaction on the viewer's associated computer and based on the determined interaction information, schedule the display timing of advertisements on the viewer's computer for the later advertisement to be displayed (column 2 lines 9-20, column 5 lines 6-18) and storing click-through information for the advertisements (Guyot, column 3 lines 55-65, column 4 lines 16-23); and sending the click-through information to a host computer (Guyot, column 4 lines 16-23, column 6 lines 51-63).

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Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the advertisement method of Blumenau with the teachings of Guyot to include a step of adjusting timing in order to effectively present the advertisement to users (column 7 lines 19-47) since when the user is performing other activities on the computer, the probability of viewing an advertisement is relatively low (Guyot, column 1 lines 34-43).

One of ordinary skilled in the art would have been motivated because to effectively present the advertisement to users (Guyot, column 7 lines 19-47)

However, the combination of Blumenau and Guyot does not expressly teach the process of varying an amount of display time (duration or length of advertisement display time).

Adler expressly teaches the process of varying an amount of display time (fig. 5, fig. 6, col. 2 L14-41, col. 7 L15-51, col. 9 L7-67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the advertisement method of combined method of Blumenau and Guyot with the teachings of Adler in order to include a step of varying the length/duration of the later advertisement based on viewer's interaction in order to effectively present the advertisement to viewers (Blumenau, column 7 lines 19-47).

One of ordinary skilled in the art would have been motivated because it would have optimize utilization of advertising region (Adler, col. 4 L51-56).

As per claim 2, the combination of Blumenau and Guyot discloses the process sof adjusting an ad expiration tuning parameter configured to-set the quantity of time for which an advertisement is available for display (Guyot, column 2 lines 9-13, column 4 lines 34-43, column 7 lines 1-6). Motivation to combine set forth in claim 1.

As per claim 3, the combination of Blumenau and Guyot discloses the process of adjusting a maximum display count configured to set a maximum number of times an advertisement may be displayed to a user viewing a batch of ads (Guyot, column 2 lines 9-13, column 4 lines 34-43, column 7 lines 1-6). Motivation to combine set forth in claim 1.

As per claim 4, the combination of Blumenau and Guyot discloses the process of varying the amount of display time for which the later displayed advertisement is displayed comprises adjusting a minimum display time configured to set a minimum amount of time that the later displayed advertisement may be displayed before another advertisement is displayed (Guyot, column 2 lines 9-13, column 4 lines 34-67; Adler, fig. 5, fig. 6, col. 2 L14-41, col. 7 L15-51, col. 9 L7-67). Motivation to combine set forth in claim 1.

As per claim 5, the combination of Blumenau and Guyot discloses the process of adjusting an idle delay configured to cause a delay from the time a user has gone idle before a first advertisement is replaced with another advertisement (Guyot, column 5 lines 6-17, column 7 lines 49-56). Motivation to combine set forth in claim 1.

As per claim 6, the combination of Blumenau and Guyot discloses the process of adjusting an active delay configured to cause a delay from the time a user goes active before displaying another advertisement (Guyot, column 5 lines 6- 17, column 7 lines 49-56). Motivation to combine set forth in claim 1.

As per claim 7, the combination of Blumenau and Guyot discloses the process of comprising adjusting an idle (no spin) parameter configured to stop the display of a first advertisement from being replaced with the display of another advertisement after a user goes

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idle (Guyot, column 5 lines 6- 17, column 7 lines 49-67). Motivation to combine set forth in claim 1.

As per claim 8, the combination of Blumenau and Guyot discloses the process wherein monitoring a viewer's interactions with an associated computer system comprises monitoring a use of a computer mouse (Guyot, Abstract, column 2 lines 9-21, column 5 lines 6-18).

Motivation to combine set forth in claim 1.

As per claim 9, the combination of Blumenau and Guyot discloses the process wherein monitoring a viewer's interactions with an associated computer system comprises monitoring a use of a computer keyboard (Guyot, Abstract, column 2 lines 9-21, column 5 lines 6-18).

Motivation to combine set forth in claim 1.

As per claim 10, the combination of Blumenau and Guyot discloses the process wherein monitoring a viewer's interactions with an associated computer system comprises monitoring the activity of any input devices connected to the subscriber system [an auditory signal such as the viewer's voice provided through a microphone] (Guyot, column 7 lines 63-67, column 8 lines 1-1-4). Motivation to combine set forth in claim 1.

As per claim 11, the combination of Blumenau and Guyot discloses the process wherein the auditory signal is the viewer's voice (Guyot, column 7 lines 63-67, column 8 lines 1-1-4).

Motivation to combine set forth in claim 1.

As per claim 12, the combination of Blumenau and Guyot discloses the process wherein monitoring a viewer's interactions with an associated computer system comprises monitoring a maximization and a minimization status of a screen displaying advertising (Guyot, column 2 lines 19-13, column 5 lines 6-11, lines 45-61). Motivation to combine set forth in claim 1.

As per claim 13, Blumenau discloses the process wherein monitoring a viewers interactions with an associated computer system comprises monitoring a viewers use of a device that sends an input, or causes an input to be sent, to the associated computer system (Blumenau, column 17 lines 24-35).

As per claim 14, the combination of Blumenau and Guyot discloses the process wherein the timing of displayed advertisements on a screen displaying advertising is configured to not switch between advertisements if the screen displaying advertisements is minimized or occluded (Guyot, column 5 lines 6-11, lines 45-61, column 12 lines 46-56). Motivation to combine set forth in claim 1.

As per claim 64, Blumenau discloses the process wherein monitoring wherein monitoring the viewer's interactions with the associated computer system includes continually monitoring the viewer's interactions with the associated computer program (Blumenau, column 10 line 65-column 14, column 11 lines 18-29, column 16 lines 13-24).

As per claim 65, Blumenau discloses the process wherein monitoring the viewer's interactions with the associated computer system includes monitoring the viewer's interactions with the associated computer system that are unrelated to a manual adjustment of the timing of the displayed advertisements (Blumenau, column 17 lines 24-35, column 18 lines 38-49, column 20 lines 23-36).

As per claim 66, the combination of Blumenau and Guyot discloses the process wherein adjusting the timing of the later displayed advertisements includes varying lengths of time during which the advertisements are displayed on an advertisements -by- advertisements basis (Guyot, Title, column 2 lines 9-20, column 5 lines 6-18). Motivation to combine set forth in claim 1.

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Regarding claims 15-28 and 67-69, the computer program stored on a computer-readable medium corresponds directly to the method of claim 1-14 and 64-66, and thus these claims are rejected using the same rationale. Motivation to combine set forth in claim 1.

As per claim 56, Blumenau discloses the process further comprising varying the tuning parameters downloaded to the users computer; and utilizing a correlation technique to determine a correlation between the tuning parameters downloaded to the user's computer and the click-through rate of the user (Blumenau, column 14 lines 7-19, column 16 lines 13-38, column 17 lines 24-35, column 18 lines 38-56).

As per claim 57, Blumenau discloses the process further comprising setting another set of tuning parameters based on the correlation between the tuning parameters and the user's click-through rate (Blumenau, column 16 lines 13-38, column 17 lines 24-35, column 18 lines 38-56).

As per claim 70, the combination of Blumenau and Guyot discloses the process wherein the tuning parameters are configured to vary lengths of time during which the advertisements are displayed on an advertisement-by-advertisement basis (Guyot, Title, column 2 lines 9-20, column 5 lines 6-18, Adler, (fig. 5, fig. 6, col. 2 L14-41, col. 7 L15-51, col. 9 L7-67). Motivation to combine set forth in claim 1.

As per claim 71,73, the combination of Blumenau, Guyot and Adler discloses the process wherein monitoring a viewer's interactions comprises monitoring a viewer's interactions other than interactions indicating an amount of display time for which a later displayed advertisement is to be displayed on the viewer's associated computer system (Adler, fig. 5, fig. 6, col. 2 L14-41, col. 7 L15-51, col. 9 L7-67). Motivation to combine set forth in claim 1.



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As per claim 72, 74, the combination of Blumenau, Guyot and Adler discloses monitoring a viewer's interactions comprises monitoring a viewer's interactions with an application operating on the viewer's associated computer system, the application being other than an application for indicating an amount of display time for which a later displayed advertisement is to be displayed on the viewer's associated computer system (Adler, fig. 5, fig. 6, col. 2 L14-41, col. 7 L15-51, col. 9 L7-67). Motivation to combine set forth in claim 1.

#### **Additional References**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Alberts, US 5,937,392: Banner Advertising display system and method with frequency of advertisement control.
- Hoyle, US 6,141,010: Computer Interface Method and Apparatus with targeted advertising.

#### **Conclusion**

Please note that this action is made Non-Final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAMAL B. DIVECHA whose telephone number is 571-272-5863. The examiner can normally be reached on Increased Flex Work Schedule.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571-272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kamal Divecha  
Art Unit 2151  
April 16, 2007.



**ZARNI MAUNG**  
**SUPERVISORY PATENT EXAMINER**